REMARKS

The non-final Office Action mailed September 12, 2003 has been received and carefully reviewed. Claims 1-28 are pending in the application. Claims 5, 6, 12-14, 19, 20 and 26-28 were objected to but would be allowable if rewritten in independent form. Claims 1 and 15 have been amended. Claims 29-36 have been canceled without prejudice in view of the Examiner's prior Restriction Requirement. New claims 37-41 have been added. Reconsideration of the application as amended and withdrawal of the present rejections are respectfully requested in view of the amendments to the claims and the following remarks.

Claims 1, 2, 4, 7, 8, 15, 16, 18, 21 and 22 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,850,079 to *Warman et al.* Claims 3, 9, 10, 11, 17, 23, 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Warman et al.*

Applicant's claimed subject matter, as recited in claims 1 and 15, for example, is directed to a method and system for declaring an atrial episode, e.g., atrial fibrillation or atrial flutter. Applicant has amended claims 1 and 15 to indicate that therapy for atrial arrhythmia is delayed until an atrial episode is declared.

Warman discloses a system and method for delivering treatment for atrial tachyarrhythmia immediately after the atrial tachyarrhythmia is detected. In contrast to Applicant's claimed subject matter, *Warman* teaches immediately treating an atrial tachyarrhythmia upon detection and fails to teach Applicant's recited feature of delaying atrial arrhythmia therapy until an atrial episode is declared.

According to *Warman*'s approach, therapy for terminating an atrial tachyarrhythmia episode (atrial fibrillation or flutter) involves delivering an atrial fibrillation therapy upon AF detection by initiating ventricular pacing at a pacing rate lower or higher than the base pacing rate. (*see, e.g.*, col. 1, lines 61-63, and col. 2 lines 21-26). The system may deliver atrial fibrillation therapy by pacing in VVI mode at a rate higher or lower than the programmed rate (*see* Figure 6, element 508). While delivering therapy for atrial fibrillation by VVI pacing at the therapy rate, the system determines if

the atrial fibrillation has been terminated. (*see* Figure 6, element 512) If the atrial fibrillation episode has been terminated, then normal pacing resumes. (*see* Figure 6)

Warmer teaches that:

> If atrial fibrillation is detected, the device begins timing a first time interval 506, during which the device delivers VVI pacing at a rate which is substantially greater than the pacing rate PR, for example, 1.5-2.5*PR. Following each delivered ventricular pacing pulse or sensed depolarization at 510, the device checks at 512 to determine whether atrial fibrillation has terminated . . . (column 10, lines 45-51).

Warman fails to disclose, either expressly or inherently, all of the elements of Applicant's independent or dependent claims. For example, *Warman* fails to teach declaring an atrial episode in a manner that involves delaying delivery of atrial arrhythmia therapy, inhibiting pacing of the atrium, and classifying atrial intervals. Rather, as is made clear above, *Warman* teaches immediately initiating atrial arrhythmia therapy upon detection of atrial fibrillation. Accordingly, independent claims 1 and 15 are not anticipated by *Warman*.

Because claims 2, 4, 7, 8, 16, 18, 21 and 22, which depend directly or indirectly from independent claims 1 or 15, include the features recited in the independent claims as well as additional features, Applicant asserts that claims 2, 4, 7, 8, 16, 18, 21 and 22 are also patentably distinct over *Warman*. Applicant is not conceding the correctness of the Examiner's rejection with respect to the dependent claims and reserves the right to make additional arguments should the Examiner maintain the rejection of the base claims.

With regard to the rejection of claims 3, 9, 10, 11, 17, 23, 24 and 25 as being unpatentable over *Warman* under 35 U.S.C. § 103(a), Applicant respectfully asserts that *Warman* fails to teach or suggest all of the claim limitations set forth in claims 3, 9, 10, 11, 17, 23, 24 and 25. Applicant refers to the arguments presented above with respect to the anticipation rejection. *Warman* does not disclose, teach or suggest all of the claim limitations of Applicant's independent claims 1 and 15. Therefore, claims 3, 9, 10, 11, 17, 23, 24 and 25, which depend from claims 1 or 15 are also patentable over *Warman*.

Without acquiescing to the Examiner's rejections with respect to claims, 3, 9, 10, 11, 17, 23, 24 and 25, Applicant believes it unnecessary to address all grounds of rejection for each dependent claim in view of the clear grounds for patentability of base claims 1 and 15. Applicant, however, reserves the right to make additional arguments should the Examiner maintain the rejection of the base claims.

In view of the amendments and remarks presented above, Applicant believes that the application is in condition for allowance.

Respectfully submitted,

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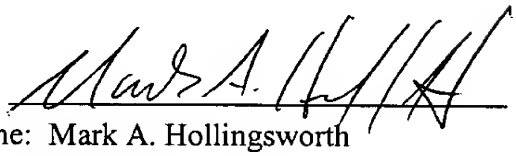
By: 
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